IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 9965 of 2007(J)

PETITIONER:

IRRNJALAKUDA CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD., NO.R 312, IRINJALAKUDA REP.BY ITS PRESIDENT, T.K.ADITHYAVARMA.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:
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1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, THRISSUR.

2. KERALA STATE CO-OPERATIVE EMPLOYEES UNION (C.I.T.U) REG. NO.431/75, IRINJALAKUDA AREA COMMITTEE, IRINJALAKUDA.

BY ADV. SRI.P.N.MOHANAN
GOVT. PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE COMMUNICATION ACCORDING APPROVAL TO THE STAFF PATTERN AS WELL AS THE FEEDER CATEGORY RULES DTD. 12-4-06**
EXT.P2	**TRUE COPY OF THE FEEDER CATEGORY RULES APPROVED BY THE JOINT REGISTRAR.**
EXT.P2(A)	**TRUE COPY OF THE STAFF PATTERN DTD.NIL**
EXT.P3	**TRUE COPY OF THE DECISION OF THE COMMITTEE DTD. 9-5-06**
EXT.P4	**TRUE COPY OF THE NOTICE.**
EXT.P5	**RELEVANT COPY OF THE NOTICE DTD. 7-2-07**
EXT.P6	**TRUE COPY OF THE ORDER DTD. 1-3-07.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

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W.P.(C).No. 9965 OF 2007

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Dated this the 17th day of August, 2007

JUDGMENT

Writ petition is filed challenging Ext.P6. Ext.P6 is an order passed by the Joint Registrar purportedly under Rule 176 of the Co-operative Societies Rules. Case of the petitioner in brief is as follows:

Ext.P2 is the registered bylaws of the Co-operative society. Clause 4 therein provides as follows:

> " Promotion shall be made from qualified hands in the feeder category according to seniority and efficiency."

2. As promotions were to be effected to the post of Junior Clerk, the Committee decided to effect promotion on the basis of seniority, but subject to the efficiency test, it is stated. Second respondent is a trade union. It took up the matter before the Joint Registrar as it felt that it is against Rule 185(1). Rule 185(1) reads as follows:

> " Subject to the provisions of sub-rules (2), (3) and (4), appointments to the categories of

posts in a society, other than those mentioned in Sub-rules (2),(3) and (4), shall be made by promotion, on the basis of seniority in the feeder category. The feeder categories for this purpose shall be specified by framing suitable regulations, with the approval of the Registrar."

The third proviso to the same declares as follows:

" Provided also that the promotion from sub staff category to the post of Junior Clerks shall be made only if such employees are having the required qualification and minimum three years service in the feeder category."

3. On the basis of the same apparently the Joint Registrar has passed Ext.P6 interdicting the holding of efficiency test. Petitioner society takes exception to the same .

4. I heard learned counsel for the petitioner, learned counsel for the second respondent and the learned Government Pleader also.

5. Learned counsel for the petitioner Sri.P.Ravindran would contend that the impugned order is vulnerable on various grounds. It is firstly submitted that the second respondent had no jurisdiction in the matter. This is for the reasons that this is a

matter which is outside his jurisdiction in view of section 69 of the Co-operative Societies Act. He would rely on the judgment of this court reported in **Prakasini v. Joint Registrar** (2006(1) KLT 199. Therein this court took the view that there is exclusion of power under Section 176 in respect of disputes falling under Section 69. He would further contend that the second respondent has no locus standi to take up the issue before the Joint Registrar and the employees in question who are being subjected to the efficiency test have not themselves come either before this court or before the Joint Registrar. What is more important is that they have not even taken up the matter under Section 69 of the Act, it is submitted. He would submit that the bylaws are registered by the Registrar with knowledge apparently of Rule 185(1). He would in fact point out that action under Section 32 would lie even when a society violates the bylaws and therefore all that the society is doing is to act in conformity with the bylaw. He would submit that the post in question is the post of Junior Clerk. The employees are promoted from the category of sub-staff on the basis of the seniority. All that is being done is to see that the employees concerned who are promoted are

found to be possessing the basic level of knowledge in English and skills in the field of Computer. Learned counsel submits that it is a settled law that there cannot be public interest litigation in service matters and therefore the locus standi of the second respondent is suspected. He also relied on Rule 182(5) of the Rules. It reads as follows:

> " In respect of societies and posts not covered by section 80(3) (a) and section 80B of the Act, the appointments shall be made by the Committee after conducting the written examination and interview as per the guidelines issued by the Registrar."

6. Learned counsel for the second respondent Sri.P.N.Mohanan on the other hand would contend that Rule 176 provides for power with the Joint Registrar to rescind a resolution if it is against the statute be it the parent Act or the Rules. In this case it is stated that the action of the committee is against the provisions of the Rules. He would further meet the argument of Sri.P.Ravindran based on the decision of this court by pointing out that section 69 will apply only if the dispute arising between parties in the said section. The second respondent being a trade union would not fall in the categories

enumerated in Section 69, he submits. In such circumstances, the embargo in Section 69 will not apply and in circumstances warranting action under Rule 176 nothing prevents the Joint Registrar from acting as so in fact done by issuing Ext.P6, he contends. He would also submit that the embargo under section 69 will not apply as there is violation of the provisions of Rule 185 as in this case. He also submits that Ext.P2 rules were registered on 01/08/2006. Rule 185(5) underwent an amendment and in respect of categories mentioned in Rule 185 (5), the concept of efficiency test mentioned in Ext.P2 may be the relevant, it is submitted. He would therefore contend that Clause 4 in Ext.P2 should be read linked with sub Rule 5 of Rule 185 and it will not apply in respect of promotion of employees covered by rule 185(1).

7. Learned Government Pleader supports the action of the Joint Registrar by stating that it is a clear case where holding of an efficiency test is against the dictate of Rule 185(1) which declares that the only criteria for promotion for classes of employees mentioned in sub rule 1 is by way of seniority.

8. I would decline my jurisdiction in this writ petition on

the following reasoning. A perusal of Rule 185(1) can leave anyone in doubt that the rule making authority has contemplated that promotion to the categories mentioned in the sub rules shall be made on the criteria of seniority alone. Of course, the third proviso to the said rule engrafts a rider in so far as apart from seniority, promotion is conditioned upon the employee concerned being possessed the requisite qualifications and also having three years service. Apart from this the rule does not contemplate the holding of any test.

9. I would think it is impermissible under the rules. In other words, my considered view is that as long as an employee falls under sub rule 1 they have a legal right to be promoted based on satisfaction of conditions in sub rule 1 as already indicated. They cannot be subjected to any efficiency test. It may be another thing if they are imparted with any training, but it cannot be that their promotion is in any way made precarious depending on their success in any test. Much as I may agree with the learned counsel for the petitioner with the need for such test, I am afraid his contentions are in the teeth of Rule 185(1). In this state of facts and the law I would think that I should

decline jurisdiction in the matter under Article 226 which is discretionary. Even though I am not convinced by the contentions of Sri.P.N.Mohanan based on availability of power of Joint Registrar to a trade union under Rule 176, I do not think that said contention should detain me in this matter. Without finally pronouncing on the contentions of the petitioner based on Section 69 and also based on there being an embargo against public interest litigation in service matters, since the petitioner society is seeking reliefs under Article 226, I withhold reliefs to the petitioner on the basis that the view which the petitioner espouses is palpably against the mandate of Rule 185(1). On that ground I dismiss the writ petition. Writ petition is dismissed.

(K.M.JOSEPH, JUDGE)

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